No. 62.

Brf. of Ridout for D. E.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

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S. A. AND S. C. HASELTINE,
PLAINTIFFS IN ERROR,

vs.

THE CENTRAL NATIONAL BANK OF SPRINGFIELD, MISSOURI.

Brief for Defendant in Error on the Merits.

JOHN RIDOUT,
Attorney for Defendant in Error.

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Brief for Defendant in Error on the Merits.

In this case, a motion by the defendant in error to dismiss the writ of error because the judgment below was not final, has been submitted and is now under consideration by this court. Inasmuch as this case may be called before the said motion is disposed of, the defendant in error not waiving, but insisting upon its motion to dismiss, deems it proper to submit this Brief upon the merits.

There is a single question presented on this Record: If the judgment below was of such a character that the writ of error can be sustained, the defendant in error insisting that the writ must be dismissed for the reasons stated in the Brief heretofore filed in support of its motion.

That question is, Whether under section 5198 of the Revised Statutes of the United States, a person who has paid usurious interest to a national bank can recover double the amount thereof before the debt in respect of which such interest has been paid, has itself been fully paid.

This question has been settled against the right to recovery under such circumstances, by the case of—

McBroom *vs.* Scottish Investment Co., 153 U. S. 318.

In this case the question involved was the construction of a statute of New Mexico, but this court, in the course of the opinion, calls attention to similarity between that statute and the provisions of section 5198, and then proceeds to hold that there can be no recovery for usurious interest until the debt has been fully paid, because until that event happens, it can not be truly said that usurious interest has been paid.

The construction by this court of a section of the National Bank Act must, for obvious reasons, prevail over any contrary decisions of State courts.

Bank *vs.* Dearing, 91 U. S 33.

Plaintiffs in error really concede the accuracy of the above contention, but insist that McBroom *vs.* Scottish Investment Company is overruled by—

Brown *vs.* Marion National Bank, 169 U. S. 416.

But this is a misapprehension of the scope of the decision in the case last cited. Examination of the record in that case discloses that the single question presented to the court was whether, under section 5198, usurious interest included in a note thereby became part of the principal and was protected from the operation of that section.

Not only is there nothing in the opinion which contravenes the decision in McBroom *vs.* Scottish Investment Co., *supra*, but Mr. Justice Harlan, who wrote the opinion in both cases, cites the McBroom case in support of some of the propositions enunciated in the Brown case, so that the latter case, if not an express affirmance of the McBroom case, distinctly approves it.

It is deemed wholly unnecessary to do more than call the

court's attention to the unanswerable reasoning of the McBroom case.

It is an interesting fact, as appears in the Brown case, that precisely what is contended for on the motion to dismiss filed in this cause, was decided in that cause.

The Brown case, which came from Kentucky, first appeared in this court on a writ of error to the Court of Appeals of Kentucky on a judgment reversing the judgment below and remanding the cause for further proceedings. This writ of error was dismissed on motion for want of finality in the judgment below.

Brown *vs.* Baxter, 146 U. S. 619.

The case reported in 169 U. S. was brought to this court on a writ of error from the final judgment ultimately rendered.

It is submitted that the motion to dismiss should be granted, but if the court should not be of that opinion, then that the judgment below should be affirmed.

JOHN RIDOUT,
Attorney for Defendant in Error.